SUPREME COURT, U. S.
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in the

Supreme Court

of the

United States

October Term, 1969

No. 367

EDMOR PROPERTIES, INC., A Florida Corporation,
Petitioner,

vs.

METROPOLITAN DADE COUNTY, FLORIDA, A Governmental Subdivision of The State of Florida,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

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INDEX TO PETITION

	Page
CITATION TO OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED FOR REVIEW	3
CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED	4
STATEMENT OF THE CASE	6
HOW THE FEDERAL QUESTIONS WERE RAISED	7
REASONS RELIED ON FOR ALLOWANCE OF THE WRIT	8
QUESTION I	8
QUESTION II	10
CONCLUSION	13
CERTIFICATE OF SERVICE	14

INDEX TO APPENDIX

	Page
APPENDIX A, OPINION OF THE DISTRICT COURT OF APPEAL, THIRD DISTRICT	App. 1
APPENDIX B, DENIAL OF REHEARING PETITION	App. 3
APPENDIX C, SECTION 18-3, METROPOLITAN CODE OF DADE COUNTY, FLORIDA	App. 5
APPENDIX D, FINAL JUDGMENT OF THE CIRCUIT COURT IN AND FOR DADE COUNTY, FLORIDA	App. 15
APPENDIX E, DENIAL OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA	App. 17

TABLE OF AUTHORITIES

	Page
BROWNING v. HOOPER, 269 U.S. 396, 46 S.Ct. 141, 70 L.Ed. 330 (1926)	11
CHESEBRO v. LOS ANGELES COUNTY FLOOD CONTROL DISTRICT, 306 U.S. 459, 59 S.Ct. 622, 83 L.Ed. 921 (1939)	10
GLEASON v. DADE COUNTY, 174 So.2d 466 (Fla.App. 1965)	9
MYLES SALT COMPANY v. NEW IBERIA AND ST. MARY DRAINAGE DISTRICT, 239 U.S. 478, 36 S.Ct. 204, 60 L.Ed. 392 (1916)	9
ROBERTS v. RICHLAND IRRIGATION DISTRICT, 289 U.S. 71, 53 S.Ct. 519, 77 L.Ed. 1038 (1933)	10
TURNER v. STATE, 168 So.2d 192 (Fla.App. 1964)	9
VILLAGE OF NORWOOD v. BAKER, 172 U.S. 269, 19 S.Ct. 187, 43 L.Ed. 443 (1898)	10
WALKER v. CITY OF HUTCHINSON, 352 U.S. 112, 77 S.Ct. 200, 1 L.Ed.2d 178 (1956)	11

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METROPOLITAN DADE COUNTY, FLORIDA, A Governmental Subdivision of The State of Florida,
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PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Petitioner prays that a writ of certiorari issue to review the judgment of the District Court of Appeal of Florida, Third District, filed December 17, 1968, and affirmed by the denial of Petition for Writ of Certiorari to the Supreme Court of Florida on March 27, 1969.

CITATIONS TO OPINIONS BELOW

Final Judgment was filed in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, on February 21, 1968, and recorded in Circuit Court Minute Book No. 918, at Page 289 on February 23, 1968.

The judgment of affirmance of the District Court of Appeal of Florida, Third District was filed December 17, 1968, is recorded in Minute Book 29 at Page 12, and is recited in Appendix A hereto, *infra*, p. App. 1. Rehearing was denied on January 17, 1969, recorded at Minute Book 29 at Page 134, and is recited in Appendix B hereto, *infra*, p. App. 3. The opinion of the District Court of Appeal, Third District, is unreported. The Petition for Writ of Certiorari was denied by the Supreme Court of Florida on March 27, 1969, is unreported and recited in Appendix E hereto, *infra*, p. App. 17.

JURISDICTION

The judgment of the District Court of Appeal of Florida, Third District is dated December 13, 1968, and was filed on December 17, 1968. An order denying rehearing was entered on January 17, 1969. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257(3) because a title, right, privilege or immunity claimed under the Constitution or Statutes of the United States was denied by the District Court of Appeal of Florida, Third District. Jurisdiction is also invoked under Rule 19(1)(a) of the Rules of the Supreme Court of the United States, adopted June 12, 1967, effective October 2, 1967, and as amended to June 20, 1968, because a State Court had decided a federal question of substance in a way probably not in accord with applicable decisions of this Court.

QUESTIONS PRESENTED FOR REVIEW

I.

WHETHER IT IS A VIOLATION OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW TO INCLUDE THE PETITIONER'S VACANT DWELLING UNITS WITHIN A PARTICULAR TAXABLE CLASS, AND TO IMPRESS A CHARGE UPON THESE PROPERTIES, WHEN, IN FACT, THESE VACANT UNITS DO NOT BEAR ANY RELATIONSHIP TO, AND ARE NOT SIMILARLY SITUATED WITH, OTHER OCCUPIED UNITS WHICH CONSTITUTE THE TAXABLE CLASS, AND WHEN THEY CANNOT AND DO NOT RECEIVE ANY OF THE BENEFITS FOR WHICH THE CHARGE IS IMPOSED.

II.

WHETHER A COUNTY CAN IMPOSE A SERVICE CHARGE IN THE NATURE OF A SPECIAL ASSESSMENT UPON HOMEOWNERS FOR A WASTE COLLECTION SERVICE WITHOUT FIRST FOLLOWING A PROCEDURE BY WHICH THE HOMEOWNERS WOULD HAVE AN OPPORTUNITY TO BE HEARD AS TO WHETHER THEY DESIRED THE SERVICE AND ITS CONCOMITANT CHARGE.

CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED

Constitution of the United States—Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Title 28, United States Code, Rules of the Supreme Court of the United States, Rule 19. Considerations governing review on certiorari:

> 1. (a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions in this Court.

Home Rule Charter of Dade County, Florida, Section 1.01. Powers.

> (A) (9) Provide and regulate or permit municipalities to provide and regulate waste and sewage collection and disposal and water supply and conservation programs.
>
> (A)(11) By ordinance, establish, merge, and abolish special purpose districts within which may be provided police and fire protection, beach erosion control,

> recreation facilities, water, streets, sidewalks, street lighting, waste and sewage collection and disposal, drainage, and other essential facilities and services. All county funds for such districts shall be provided by service charges, special assessments, or general tax levies within such districts only. The Board of County Commissions shall be the governing body of all such districts and when acting as such governing body shall have the same jurisdiction and powers as when acting as the Board.

Code of Metropolitan Dade County, Florida, Chapter 15, Garbage and Trash:

Section 15-3. Prima facie evidence of accumulation of waste.

> The fact that any residential unit or any commercial establishment located in any waste district is occupied shall be prima facie evidence that garbage or other refuse is being produced or accumulated upon such premises. However, temporary residential vacancy regardless of duration, shall not authorize a refund or excuse the nonpayment of any waste fee. Waste fees shall be chargeable on new residential units immediately, following the initial connection of permanent electric service or whenever the first waste is picked up from such unit by the county, whichever shall occur first.

Code of Metropolitan Dade County, Florida, Chapter 18, Improvement Districts, Section 18-3 is included in Appendix C, *infra*, p. App. 5.

STATEMENT OF THE CASE

The Petitioner is a Florida corporation which owns numerous duplexes and single-family dwelling units in Dade County, Florida. The Respondent, Metropolitan Dade County, operates under a "Home Rule Charter" granted by the Florida Legislature. Pursuant to this Charter, a Board of County Commissioners is the legislative and governing body of the county, and has the power, among others, to establish special purpose districts and to provide and regulate waste collection.

Under the authority of this Charter, the Board promulgated Chapter 15, entitled "Garbage and Trash." Other than for commercial establishments (which does not include duplexes), all single-family residences, as well as duplexes, must accept and use the county waste collection service. For this service, a "waste fee" is exacted and impressed in accordance with Section 15-3, *supra.*

Petitioner filed a complaint in the Circuit Court alleging that oftentimes its duplexes and single-family dwelling units were vacant for extended periods of time; yet, in spite of their vacancy, and non-accumulation of garbage, it was still being charged for waste collection ("temporary vacancy regardless of duration, shall not authorized a refund or excuse the nonpayment of any waste fee").

Petitioner complained that it was being assessed a fee but receiving no benefit; that its unoccupied property was unreasonably classified with property which had occupants on it, which did produce garbage and which could avail itself of the waste collection service; and that the County was without power to impose a mandatory fee without first establishing a special purpose district in accordance with the Charter.

Petitioner, therefore, asserted that it was being deprived of its property without due process of law, that it was being denied the equal protection of the law, and that there was never a special purpose district formed which, prior to formation, would have given Petitioner an opportunity to be heard upon its desire to be specially assessed for waste collection.

HOW THE FEDERAL QUESTIONS WERE RAISED

Both questions were raised in the Complaint filed in the Circuit Court in and for Dade County, Florida. Moreover, the Circuit Court, in its Final Judgment, ruled directly on both points. Thereafter, they were raised by assignment of error and argument in the District Court of Appeal of Florida, Third District. They were also raised in the Petition for Writ of Certiorari to the Supreme Court of Florida.

The Circuit Court found as follows upon the questions raised:

(1) "Nor, does the Court find any merit in the contention that Metro can only assess such charges after the creation of a special taxing district.***"

(2) "Since the availability of garbage and waste collection and disposal is provided for tenanted and occupied property, as well as for untenanted and unoccupied property, there is no denial of equal protection, and the mechanics of the ordinance satisfy the due process clause of the constitution. ***"

A copy of the entire judgment is recited in Appendix D, *infra*, p. App. 15.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

QUESTION I.

WHETHER IT IS A VIOLATION OF DUE PROCESS AND EQUAL PROTECTION OF THE LAW TO INCLUDE THE PETITIONER'S VACANT DWELLING UNITS WITHIN A PARTICULAR TAXABLE CLASS, AND TO IMPRESS A CHARGE UPON THESE PROPERTIES, WHEN, IN FACT, THESE VACANT UNITS DO NOT BEAR ANY RELATIONSHIP TO, AND ARE NOT SIMILARLY SITUATED WITH, OTHER OCCUPIED UNITS WHICH CONSTITUTE THE TAXABLE CLASS, AND WHEN THEY CANNOT AND DO NOT RECEIVE ANY OF THE BENEFITS FOR WHICH THE CHARGE IS IMPOSED.

The Petitioner, like numerous other individuals in Dade County, Florida, who rent dwelling units to others, is faced with the problem of vacant and untenanted units. Not only do these units fail to produce income, they fail to produce garbage and are not otherwise in need of a waste collection service. Yet, because of the wording of Section 15-3, it does not matter how long a dwelling is unoccupied ("regardless of duration"). There is no provision for permitting the Petitioner to notify the County that its trucks need not stop at a particular dwelling because it does not, and cannot, utilize the service.

This is unlike the situation of sewage disposal by pipeline. It would be impractical, and very expensive, to lay pipes in a tic-tac-toe manner, connecting one house and not another. Here, however, Petitioner merely wishes to be able to call the waste department, or, even more

simply, and by example, plant a "red flag" out in front of an unoccupied dwelling to signify vacancy so the truck can roll "right-on-by." The Third District Court of Appeal of Florida, Third District has twice characterized the mandatory fee as a special assessment lien, and not a tax. *Turner v. State*, 168 So.2d 192 (Fla.App. 1964); *Gleason v. Dade County*, 174 So.2d 466 (Fla.App. 1965). Supposedly, it is levied for service. But a dwelling, vacant for a year or two years, or more, is conclusively unable to avail itself of the service. Just because a piece of property has a house on it, it must pay for the "service."

Nor is this a question of sanitation. If 15,000 houses produce 15,000 quantities of garbage, and each quantity is collected, and charged accordingly, there is no health danger presented by those premises which have no accumulation of garbage to collect. The Petitioner, at times, is being included in a class of taxpayers to which, at times, it does not belong; and its inclusion is solely to help defray the expense of the benefit enjoyed only by occupied dwelling units.

Because of the ease with which a rolling truck can be notified not to stop, the Petitioner, and others similarly situated, can enter and leave the taxable class without causing any difficulty, expense or deficiency of service to those who properly can avail themselves of it.

The prerequisite of benefits to valid special assessments is a fundamental rule. In *Myles Salt Company v. New Iberia and St. Mary Drainage District*, 239 U.S. 478, 36 S.Ct. 204, 60 L.Ed. 392 (1916), this Court held:

> "It is to be remembered that a drainage district has the special purpose of the improvement of particular property and when it is so formed to include property which is not and cannot be bene-

> fited directly or indirectly, including it only that it may pay for the benefit of other property, there is an abuse of power and an act of confiscation.***"
> *Id.*, 239 U.S. at 481; 36 S.Ct. at 206.

See also *Village of Norwood v. Baker*, 172 U.S. 269, 19 S.Ct. 187, 43 L.Ed. 448 (1898); *Chesebro v. Los Angeles County Flood Control District*, 306 U.S. 459, 59 S.Ct. 622, 83 L.Ed. 921 (1939).

Under the Dade County ordinance no excuse for nonpayment is permitted. Even if a dwelling is built and never occupied, it must still pay for garbage collection. It is believed that unoccupied units should be exempt from the assessment proportionate to their period of vacancy with a practical limit on the minimum period of vacancy. In this manner, the assessment will not palpably and grossly exceed the benefits which it was designed to yield. *Roberts v. Richland Irrigation District*, 289 U.S. 71, 53 S.Ct. 519, 77 L.Ed. 1038 (1933).

QUESTION II.

WHETHER A COUNTY CAN IMPOSE A SERVICE CHARGE IN THE NATURE OF A SPECIAL ASSESSMENT UPON HOMEOWNERS FOR A WASTE COLLECTION SERVICE WITHOUT FIRST FOLLOWING A PROCEDURE BY WHICH THE HOMEOWNERS WOULD HAVE AN OPPORTUNITY TO BE HEARD AS TO WHETHER THEY DESIRED THE SERVICE AND ITS CONCOMITANT CHARGE.

The initial portion of Section 1.01 (A) (11) of the Metropolitan Charter states that an example of a special purpose district is a district for waste collection. Following that example, the section proceeds to require that:

> "(A) (11) County funds for such districts shall be provided by service charges, special assessments, or general tax levies within such districts only. ***"

Moreover, Section 15-3 of the Metropolitan Code sets forth the criterion for assessment within "any waste district."

The Charter and Code, it is believed, anticipated that garbage collection was to be performed, and the assessment levied, within some form of "waste district" (Code Section 15-3) or "special purpose district" (Charter Section 1.01(A)(11)). Indeed, Section 18-3 of the Code establishes elaborate procedures and guidelines for assuring homeowners "notice and hearing" before the formation of a special purpose district, which would, thereafter, impose a charge upon those within the district.

An essential, constitutional, prerequisite to the validity of a special assessment is that the individuals to be assessed have an opportunity to be heard upon whether they desire to be assessed. *Walker v. City of Hutchinson*, 352 U.S. 112, 77 S.Ct. 200, 1 L.Ed.2d 178 (1956); *Browning v. Hooper*, 269 U.S. 396, 405, 46 S.Ct. 141, 143, 70 L.Ed. 330 (1926). In the case at bar, this is particularly important because of the availability throughout the County, of various, private collection services.

If they could provide faster, cheaper and more efficent service, Dade County citizens may well have rejected the county's offer. In any event, they were denied a public hearing whereat the merits of private collection versus public collection could be weighed.

Interestingly, a public hearing on the desirability of a special assessment is only available incident to the formation of a special purpose district. It was this type of district which was contemplated to be the administering agent for waste collection, but it was never formed; accordingly, hearings were never held and a vote of the citizenry was never taken.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for Writ of Certiorari should be granted so that the record may be reviewed in its entirety.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Writ of Certiorari to the District Court of Appeal of Florida, Third District, was mailed to the HONORABLE THOMAS BRITTON, County Attorney, Dade County Courthouse, Miami, Florida, this 2nd day of July, 1969.

Alfred M. Carvajal

ALFRED M. CARVAJAL